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Superior Court of California
County of Los Angeles

JUL 13 2017

Sherri R. Carter, Executive Officer/Clerk
By: M. Soto, Deputy
Moses Soto

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

PETCO ANIMAL SUPPLIES, INC.;
CENTRAL GARDEN & PET COMPANY;
and DOES 1 through 100, Inclusive,

Defendants.

) Unlimited Jurisdiction

) CASE NO. **BC 668588**

) COMPLAINT FOR CIVIL PENALTY AND
) INJUNCTIVE RELIEF

) (Health & Safety Code § 25249.5 et seq.)

) TOXIC TORT/ENVIRONMENTAL

BY FAX

1 Plaintiff, Shefa LMV, INC., hereby alleges:

2
3 **I. PRELIMINARY STATEMENT**

4 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
5 to Di[2-Ethylhexyl] Phthalate (hereinafter “DEHP”), a chemical known to the State of California to
6 cause cancer or reproductive harm.

7 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
8 Code § 25249.6 (also known as “Proposition 65”) businesses must provide persons with a “clear and
9 reasonable warning” before exposing individuals to chemicals known to the State of California to
10 cause cancer or reproductive harm.

11 **II. PARTIES**

12 3. Plaintiff is a non-profit public benefit corporation formed pursuant to the laws of the
13 State of California, made up of California citizens, represented by and through its counsel of record,
14 the Law Office of Daniel N. Greenbaum.

15 4. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65
16 may be brought by “any person in the public interest.”

17 5. Defendant PETCO ANIMAL SUPPLIES, INC. (“PETCO”) is a business entity with
18 ten or more employees that sells, or has, at times relevant to this complaint, authorized the
19 manufacture, distribution, or sale of plastic handled pet stake products and/or plastic aquarium
20 accessories that contain Di-[2-Ethylhexyl]Phthalate) (“DEHP”) without first providing a clear and
21 reasonable warning as required by Proposition 65.

22 6. Defendant CENTRAL GARDEN & PET COMPANY. (“CENTRAL”) is a business
23 entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
24 manufacture, distribution, or sale of plastic handled pet stake products and/or plastic aquarium
25 accessories that contain Di-[2-Ethylhexyl]Phthalate without first providing a clear and reasonable
26 warning as required by Proposition 65.

27 7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
28 Plaintiff suspects they are business entities with at least ten or more employees that have sold,

1 authorized the distribution, or sale of the plastic handled pet stake products and plastic aquarium
2 accessories that contain Di-[2-Ethylhexyl]Phthalate without first providing a clear and reasonable
3 warning as required by Proposition 65.

4 8. Defendants (hereinafter and collectively known as the “Defendants”) named in
5 paragraphs 5 through 7 have at all times relevant hereto authorized the manufacture, distribution, or
6 sale of plastic handled pet stake products, including but not limited to You & Me Well Grounded
7 Stake, with a product identifier of UPC: 800443980910, and plastic aquarium accessories, including
8 but not limited to Imagitarium™ Fine Mesh Net For Shrimp, SKU2580993; UPC: 800443224663
9 and the Aqueon Siphon Vacuum Gravel Cleaner, Mini 5”; Item #06226; UPC: 015905062268, that
10 are manufactured, sold, or distributed for sale in California by Defendants that contain Di-[2-
11 Ethylhexyl]Phthalate) (“DEHP”) (collectively, the “PRODUCTS”) without first providing a clear and
12 reasonable warning as required by Proposition 65.

13 **III. JURISDICTION AND VENUE**

14 9. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
15 because this case is a cause not given by statute to other trial courts.

16 10. This Court has jurisdiction over Defendants, because they are business entities that do
17 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
18 themselves of the California market, through the sale, marketing, and use of its products in
19 California, to render the exercise of jurisdiction over it by the California courts consistent with
20 traditional notions of fair play and substantial justice.

21 11. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
22 County because Defendant’s products are sold and consumed in this county.

23 **IV. STATUTORY BACKGROUND**

24 **A. Proposition 65**

25 12. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
26 passed as “Proposition 65” by a vote of the people in November of 1986.

1 13. The warning requirement of Proposition 65 is contained in Health & Safety Code §
2 25249.6, which provides:

3
4 No person in the course of doing business shall knowingly and intentionally
5 expose any individual to a chemical known to the state to cause cancer or
6 reproductive toxicity without first giving clear and reasonable warning to
such individual, except as provided in Section 25249.10.

7 14. An exposure to a chemical in a consumer product is one “which results from a
8 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
9 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR 25602(b))

10 15. Proposition 65 establishes a procedure by which the State develops a list of chemicals
11 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code § 25249.8.)

12 16. No warning need be given concerning DEHP until one year after the chemical first
13 appears on the list. (Health & Safety Code § 25249.10(b).)

14 17. Any person “violating or threatening to violate” the statute may be enjoined in any
15 court of competent jurisdiction. (Health & Safety Code, § 25249.7.)

16 18. To “threaten to violate” is defined to mean “to create a condition in which there is a
17 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

18 19. In addition, violators are liable for civil penalties of up to \$2,500 per day for each
19 violation, recoverable in a civil action. (Health & Safety Code § 25249.7 (b).)

20 20. Actions to enforce the law “may be brought by the Attorney General in the name of
21 the People of the State of California [or] by any district attorney [or] by any City Attorney of a City
22 having a population in excess of 750,000 . . .” (Health & Safety Code § 25249.7(c).)

23 21. Private parties are given authority to enforce Proposition 65 “in the public interest,”
24 but only if the private party first provides written notice of a violation to the alleged violator, the
25 Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.

26 22. If no public prosecutors commence enforcement within sixty days, then the private
27 party may sue. (Health & Safety Code § 25249.7(d).)

28 23. No such governmental action has been pursued against Defendants.

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V. FACTS

24. Di[2-Ethylhexyl] Phthalate (“DEHP”) was placed on the Governor’s list of chemicals known to the State to cause cancer on January 1, 1988. (27 CCR 27001(b))

25. Di[2-Ethylhexyl] Phthalate (“DEHP”) was placed on the Governor’s list of chemicals known to the State to cause reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

26. DEHP is hereinafter referred to as the “LISTED CHEMICAL.”

27. Defendants are the manufacturer and marketer of the PRODUCTS for use by individuals in the home and in other endeavors.

28. The PRODUCTS are sold through various retailers located in California for use by citizens of the State of California.

29. Individuals who purchase, handle, or use the PRODUCTS are exposed to the Listed Chemical chiefly through:

- a. contact between the item and the skin;
- b. transfer of the Listed Chemical from the skin to the mouth, both by transfer of the Listed Chemical directly from the hand to mouth and by transfer of the Listed Chemical from the skin to objects that are put in the mouth, such as food, and
- c. through absorption of the Listed Chemical through the skin.

30. Such individuals are thereby exposed to the Listed Chemical that is present on or in the PRODUCTS in the course of the intended and reasonably foreseeable use of the PRODUCTS.

31. At all times material to this complaint, Defendants have had knowledge that the PRODUCTS contain the Listed Chemical and that an individual’s skin may come into contact with the Listed Chemical through the intended and reasonably foreseeable use of the PRODUCTS.

32. At all times material to this complaint, Defendants have had knowledge that individuals within the State of California handle the PRODUCTS, which contain the Listed Chemical.

33. At all times material to this complaint, Defendants knew that the PRODUCTS were sold throughout the State of California, and Defendants profited from such sales.

1 34. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
2 the sale of the PRODUCTS, thereby exposing consumers to the Listed Chemical.

3 35. At all times material to this complaint, therefore, Defendants have knowingly and
4 intentionally exposed individuals within the State of California to the Listed Chemical.

5 36. The exposure is knowing and intentional because it is the result of the Defendants'
6 deliberate act of authorizing the sale of products known to contain the Listed Chemical, in a manner
7 whereby these products were, and would inevitably be, sold to consumers within the state of
8 California, and with the knowledge that the intended use of this PRODUCTS would result in
9 exposures to the Listed Chemical by individuals within the State of California.

10 37. Defendants have failed to provide clear and reasonable warnings that the use of the
11 PRODUCTS in question in California to Listed Chemical, a chemical known to the State of
12 California to cause cancer and/or birth defects, and other reproductive harm, and no such warning
13 was provided to those individuals by any other person.

14 **VI. FIRST CAUSE OF ACTION**

15 **(Against All Defendants for Violation of Proposition 65)**

16 38. Paragraphs 1 through 37 are re-alleged as if fully set forth herein.

17 39. By committing the acts alleged above, Defendants have, in the course of doing
18 business, knowingly and intentionally exposed individuals in California to DEHP, a chemical known
19 to the State of California to cause cancer and/or birth defects, and other reproductive harm, without
20 first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety
21 Code § 25249.6.

22 40. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
23 \$2,500 per day for each violation, as well as other remedies.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray that the Court:

26 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
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28

1 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
2 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
3 exposing persons within the State of California to DEHP caused by the use of their products
4 without providing clear and reasonable warnings, as Plaintiffs shall specify in further
5 application to the court;


6 3. Award Plaintiffs their costs of suit;

7 4. Grant such other and further relief as the court deems just and proper.
8

9 Respectfully submitted,

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11 DATED: July 9, 2017

12 LAW OFFICE OF DANIEL N. GREENBAUM

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14 By: DANIEL N. GREENBAUM
15 Attorneys for Plaintiff
16 Shefa LMV, INC.
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